

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

THOMAS GILBERT PANDO

Registered Nurse License No. 428817  
Public Health Nurse Certificate No 47378

Respondent.

Case No. 2012-287

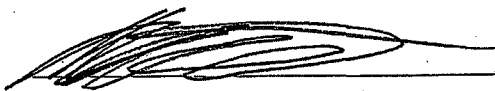
OAH No. 2011120117

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on July 27, 2012.

IT IS SO ORDERED this 27<sup>th</sup> day of June, 2012.



Board of Registered Nursing  
Department of Consumer Affairs  
State of California

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THOMAS GILBERT PANDO

Registered Nurse License No. 428817,  
Public Health Nurse Certificate No. 47378,

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Case No. 2012-287

OAH No. 2011120117

**PROPOSED DECISION**

On March 30, 2012, in San Diego, California, Carla Nasoff, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

David Hausfeld, Deputy Attorney General, Office of the Attorney General, State of California, represented complainant.

Thomas Gilbert Pando (Pando or respondent) was not present and did not have representation.

The matter was submitted on March 30, 2012.

**FACTUAL FINDINGS**

*Jurisdictional Matters*

1. On July 21, 2011, Louise R. Bailey M.ED., RN, Interim Executive Officer, Board of Registered Nursing, Department of Consumer Affairs, State of California (Board), filed Accusation No. 2012-47 in her official capacity.

The accusation and other required jurisdictional documents were served on respondent. On November 16, 2011, respondent filed a Notice of Defense. On December 7, 2011, a Notice of Hearing was served on respondent by certified mail return receipt requested. On December 10, 2011, a completed returned delivery receipt from the postal service listed the name of the person receiving the item as "T.Pando" from the same address

as listed in the Notice of Defense. Respondent was properly served and was placed on notice of the hearing. Neither party requested a continuance of the hearing.

2. On March 30, 2012, the record in the administrative hearing was opened. Jurisdictional documents were presented; documentary evidence was introduced; the record was closed and the matter was submitted.

#### *License History*

3. On August 31, 1988, the Board issued Registered Nurse License Number 428817 to respondent. (Official notice was taken of the Board of Registered Nursing web site as to the correct date of the licensure since the certification of licensure submitted inaccurately documented the issuance of the license as 1998). At all relevant times, the license was in full force and effect. On April 5, 1991, the Board issued Public Health Nurse Certificate Number PHN 47378. The license and the certificate will expire on August 31, 2012, unless renewed.

#### *Respondent's Conviction*

4. On May 7, 2010, respondent was convicted by a jury of violating Penal Code section 487, subdivision (a), (grand theft), a felony. He was placed on three years formal probation, ordered to serve 270 days in the Orange County Jail, with credit for three days. Respondent was ordered to pay fees, fines and restitution and comply with the terms of felony probation.

The facts that led to the conviction are that on April 17, 2008, respondent requested access to a bank safe deposit box number 392 and showed the bank attendant his box key. Respondent signed the access card using his father's signature. He obtained the contents in box number 392 and left the bank. Box 392 did not belong to respondent. Respondent and respondent's father had previously rented box 392, but failed to return all the bank keys. By April 17, 2008, the box was rented to another customer who had placed valuable items inside. The jury convicted respondent of grand theft, a felony. Respondent unlawfully took money and personal property of the victim that had a value exceeding four hundred dollars (\$400).

#### *Respondent Failed to Appear*

5. Respondent did not appear at the administrative hearing. Certified copies of the Orange County Superior Court criminal records for *People vs. Thomas Gilbert Pando* case number 08NF1773 were submitted.

#### *Cost of Investigation and Enforcement*

6. The Board incurred costs of investigation and enforcement of this matter in the amount of \$3,055.00 for the services of the Attorney General's Office. The amount is reasonable.

## LEGAL CONCLUSIONS

### *Burden and Standard of Proof*

1. *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856, holds that “clear and convincing proof to a reasonable certainty” applies in disciplinary proceedings seeking to revoke or suspend a professional license.

### *Statutory Provisions*

2. Business and Professions Code section 2750 provides in part:

Every certificate holder or licensee, including licensees holding temporary licenses, or licensees holding licenses placed in an inactive status, may be disciplined as provided in this article.

3. Business and Professions Code section 2764 provides:

The lapsing or suspension of a license by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such license, or to render a decision suspending or revoking such license.

4. Business and Professions Code section 2761 subdivision (a)(f) provides:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(f) Conviction of a felony or any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof. . . .

5. Business and Professions Code section 2765 states in part that a plea or verdict of guilty to a charge substantially related to the qualifications, functions and duties of a registered nurse is deemed to be a conviction within the meaning of this article. The Board may order the license or certificate suspended or revoked irrespective of a subsequent order

under the provision of Penal Code section 1203.4 allowing such person to withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

6. Business and Professions Code section 482, subdivisions (a) and (b), provide in part that each Board shall develop criteria to evaluate the rehabilitation of a person when considering the denial of a license by the board under section 480 and when considering the suspension or revocation of a license under section 490. The Board shall take into account all competent evidence of rehabilitation furnished by the licensee.

7. Business and Professions Code section 490 provides in part that the Board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Business and Professions Code section 493 provides in part that the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

9. Business and Professions Code section 125.3 provides in part that the administrative law judge may direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.

#### *Regulatory Provisions*

10. California Code of Regulations, title 16, section 1444, subdivision (c) states in part that a conviction shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to theft, dishonesty, fraud or deceit.

11. California Code of Regulations, title 16, section 1445, subdivision (b) (1-6) states in part that when considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/her eligibility for a license may consider the (1) Nature and severity of the act or offenses. (2) Total criminal record. (3) The time that has lapsed since commission of the act or offense. (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee. (5) Evidence of expungement. (6) Evidence of rehabilitation submitted by the licensee.

### *Substantial Relationship*

12. To establish a nexus between misconduct and fitness to practice a profession, it is not necessary for the misconduct to have occurred in the actual practice of the profession and a showing of patient harm is not required. It is far more desirable to impose discipline before a licensee harms any patient than after harm has occurred. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 771.)

### *Evaluation*

13. A jury convicted respondent of grand theft, a felony. Respondent unlawfully took personal property from another person's safe deposit box that had a value exceeding four hundred dollars (\$400). This deceptive conduct demonstrates poor moral character and poor judgment. This conduct further evidences respondent's present unfitness to engage in the practice of a registered nurse in a manner consistent with the public health, safety, and welfare. Registered nurses have access to the personal property of patients who are often unconscious or incapacitated or who may be out of their rooms receiving treatments or having tests. Respondent's theft demonstrates that he cannot be trusted to safeguard another's property. Registered nurses must possess good moral character and exercise good judgment. Public safety is paramount, and the public must be confident that good judgment is used and that patients are not at risk.

Respondent failed to appear at the administrative hearing. No evidence of mitigation or rehabilitation was offered. No evidence was introduced that respondent can be entrusted to retain his license and certificate, even on a probationary basis.

Under the circumstances of this case, revocation is the only measure of discipline that ensures public protection.

### *Cause Exists to Impose Discipline*

14. Cause exists to impose discipline against the registered nurse license and the public health nurse certificate issued to Thomas Gilbert Pando under Business and Professions Code sections 490, and 2761, subdivision (f), separately and collectively as established under Factual Findings 4, 5, and Legal Conclusions 1 through 12.

15. Cause exists to further impose discipline against respondent under California Code of Regulations, title 16, section 1444, subdivision (c), as established under Factual Findings 4, 5 and Legal Conclusions 1 through 12.

The clear and convincing evidence established that respondent was convicted of grand theft, a crime substantially related to the qualifications, functions, and duties of a registered nurse who must possess good moral character and exercise good judgment as established in Factual Findings 4, 5 and Legal Conclusions 1 through 12. The conduct underlying respondent's conviction evidences his present unfitness to practice nursing in a

manner consistent with the public health, safety, or welfare as established under Legal Conclusions 12 and 13.

16 Given the fact that respondent remains on criminal probation, it would be contrary to public protection to allow him to retain his license and his certificate at this time.


17 Cause was established to award costs of investigation and enforcement of this matter in the amount of \$3,055. This conclusion is based on Factual Finding 6.

#### ORDER

1. Registered Nurse License Number 428817 and Public Health Nurse Certificate Number 47378 issued to respondent, Thomas Gilbert Pando, are revoked.

2. Respondent shall pay to the Board the reasonable costs associated with its investigation and enforcement of this matter pursuant to Business and Professions Code section 125.3 in the amount of \$3,055. A payment plan may be instituted, but these costs must be paid in full prior to respondent petitioning the Board for reinstatement.

DATED: April 24, 2012

  
CARLA NASOFF  
Administrative Law Judge  
Office of Administrative Hearings

# Exhibit A

Accusation Case No. 2012-287



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8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No.

2012-287

12 **THOMAS GILBERT PANDO**  
13 **336 Molokai Drive**  
14 **Placentia, CA 92870**

**A C C U S A T I O N**

15 **Registered Nurse License No. 428817**  
**Public Health Nurse Certificate No. 47378**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
22 Consumer Affairs.

23 2. On or about August 31, 1988, the Board of Registered Nursing issued Registered  
24 Nurse License Number 428817 to Thomas Gilbert Pando (Respondent). The Registered Nurse  
25 License was in full force and effect at all times relevant to the charges brought herein and will  
26 expire on August 31, 2012, unless renewed.

27 3. On or about April 5, 1991, the Board of Registered Nursing issued Public Health  
28 Nurse Certificate Number 47378 to Thomas Gilbert Pando (Respondent). The Public Health

1 Nurse Certificate was in full force and effect at all times relevant to the charges brought herein  
2 and will expire on August 31, 2012, unless renewed.

### 3 JURISDICTION

4 4. This Accusation is brought before the Board of Registered Nursing (Board),  
5 Department of Consumer Affairs, under the authority of the following laws. All section  
6 references are to the Business and Professions Code (Code) unless otherwise indicated.

7 5. Section 2750 of the Code provides, in pertinent part, that the Board may discipline  
8 any licensee, including a licensee holding a temporary or an inactive license, for any reason  
9 provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

10 6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license  
11 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the  
12 licensee or to render a decision imposing discipline on the license. Under section 2811,  
13 subdivision (b) of the Code, the Board may renew an expired license at any time within eight  
14 years after the expiration.

### 15 STATUTORY PROVISIONS

16 7. Section 482 of the Code states:

17 Each board under the provisions of this code shall develop criteria to evaluate  
18 the rehabilitation of a person when:

19 (a) Considering the denial of a license by the board under Section 480; or

20 (b) Considering suspension or revocation of a license under Section 490.

21 Each board shall take into account all competent evidence of rehabilitation  
22 furnished by the applicant or licensee.

23 8. Section 490 of the Code provides, in pertinent part, that a board may suspend or  
24 revoke a license on the ground that the licensee has been convicted of a crime substantially  
25 related to the qualifications, functions, or duties of the business or profession for which the  
license was issued.

26 9. Section 493 of the Code states:

27 Notwithstanding any other provision of law, in a proceeding conducted by a  
28 board within the department pursuant to law to deny an application for a license or to  
suspend or revoke a license or otherwise take disciplinary action against a person who

1 holds a license, upon the ground that the applicant or the licensee has been convicted  
2 of a crime substantially related to the qualifications, functions, and duties of the  
3 licensee in question, the record of conviction of the crime shall be conclusive  
4 evidence of the fact that the conviction occurred, but only of that fact, and the board  
may inquire into the circumstances surrounding the commission of the crime in order  
to fix the degree of discipline or to determine if the conviction is substantially related  
to the qualifications, functions, and duties of the licensee in question.

5 As used in this section, "license" includes "certificate," "permit," "authority,"  
6 and "registration."

7 10. Section 2761 of the Code states:

8 The board may take disciplinary action against a certified or licensed nurse or  
9 deny an application for a certificate or license for any of the following:

10 (a) Unprofessional conduct, which includes, but is not limited to, the  
11 following:

12 (f) Conviction of a felony or of any offense substantially related to the  
13 qualifications, functions, and duties of a registered nurse, in which event the record of  
the conviction shall be conclusive evidence thereof.

14 .....  
15 11. Section 2765 of the Code states:

16 A plea or verdict of guilty or a conviction following a plea of nolo contendere  
17 made to a charge substantially related to the qualifications, functions and duties of a  
18 registered nurse is deemed to be a conviction within the meaning of this article. The  
19 board may order the license or certificate suspended or revoked, or may decline to  
20 issue a license or certificate, when the time for appeal has elapsed, or the judgment of  
conviction has been affirmed on appeal or when an order granting probation is made  
suspending the imposition of sentence, irrespective of a subsequent order under the  
provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his  
or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of  
guilty, or dismissing the accusation, information or indictment.

## 22 REGULATORY PROVISIONS

23 12. California Code of Regulations, title 16, section 1444, states:

24 A conviction or act shall be considered to be substantially related to the  
25 qualifications, functions or duties of a registered nurse if to a substantial degree it  
26 evidences the present or potential unfitness of a registered nurse to practice in a  
manner consistent with the public health, safety, or welfare. Such convictions or acts  
shall include but not be limited to the following:

27 (a) Assaultive or abusive conduct including, but not limited to, those violations  
28 listed in subdivision (d) of Penal Code Section 11160.

- 1 (b) Failure to comply with any mandatory reporting requirements.  
2 (c) Theft, dishonesty, fraud, or deceit.  
3 (d) Any conviction or act subject to an order of registration pursuant to Section  
4 290 of the Penal Code.

5 13. California Code of Regulations, title 16, section 1445 states:

6 .....  
7 (b) When considering the suspension or revocation of a license on the grounds  
8 that a registered nurse has been convicted of a crime, the board, in evaluating the  
9 rehabilitation of such person and his/her eligibility for a license will consider the  
10 following criteria:

- 11 (1) Nature and severity of the act(s) or offense(s).  
12 (2) Total criminal record.  
13 (3) The time that has elapsed since commission of the act(s) or offense(s).  
14 (4) Whether the licensee has complied with any terms of parole, probation,  
15 restitution or any other sanctions lawfully imposed against the licensee.  
16 (5) If applicable, evidence of expungement proceedings pursuant to Section  
17 1203.4 of the Penal Code.  
18 (6) Evidence, if any, of rehabilitation submitted by the licensee.

#### 19 COSTS

20 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
21 administrative law judge to direct a licensee found to have committed a violation or violations of  
22 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
23 enforcement of the case.

#### 24 CAUSE FOR DISCIPLINE

25 (May 7, 2010 Criminal Conviction for Grand Theft on April 17, 2008)

26 15. Respondent has subjected his license to disciplinary action under sections 490 and  
27 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially  
28 related to the qualifications, functions, and duties of a registered nurse. The circumstances are as  
follows:

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1           a.     On or about May 7, 2010, in a criminal proceeding entitled *People of the State*  
2     *of California v. Thomas Gilbert Pando*, in Orange County Superior Court, case number  
3     08NF1773, Respondent was convicted by a jury of violating Penal Code section 487, subdivision  
4     (a), grand theft, a felony.

5           b.     As a result of the conviction, on or about June 11, 2010, Respondent was placed  
6     on three years formal probation and ordered to serve 270 days in the Orange County Jail, with  
7     credit for three days. Respondent was further ordered to pay fees, fines, and restitution, and  
8     comply with the terms of felony probation. On June 17, 2010, Respondent filed an appeal of the  
9     conviction to the California Court of Appeal, Fourth Appellate District, Division 3, in case  
10    number G043811. On April 25, 2011, the Court of Appeal affirmed the conviction. Respondent  
11    filed a Petition for Review in the California Supreme Court on June 1, 2011. The petition was  
12    denied on July 13, 2011.

13          c.     The facts that led to the conviction are that on or about February 28, 2008, an  
14    elderly couple (hereinafter Mr. J and Mrs. J), opened four safe deposit boxes with an Anaheim  
15    bank. On May 9, 2008, Mr. and Mrs. J went to the bank to view the contents of their safe deposit  
16    boxes. When they opened box number 392, they discovered the contents were gone. The  
17    contents consisted of a gold and silver coin collection, four cases of unset diamonds, emeralds,  
18    sapphires and other gemstones, and additional coins worth a total of approximately \$250,000.  
19    The other three safe deposit boxes were not missing any items. The couple spoke to the bank  
20    manager who told them they would investigate the matter. The bank subsequently provided a  
21    photo of a suspect (Respondent) taken from a still of the bank's video surveillance and a copy of  
22    the safe deposit slip Respondent signed. The couple did not recognize the person in the photo.

23          d.     Mr. and Mrs. J reported their findings to the Anaheim Police Department on  
24    May 9, 2008. Detectives contacted the bank's corporate security representative who identified  
25    the suspect as Respondent. According to the bank, Respondent and his father previously rented  
26    box number 392, but downsized to a smaller box. Respondent was directed by the bank to return  
27    his key to box number 392 but he never did. On February 28, 2008, the bank rented box number  
28    392 to Mr. and Mrs. J, but overlooked that they did not have all the keys.

1 e. Video surveillance taken April 17, 2008 showed Respondent and his father at  
2 the bank. Respondent requested access to safe deposit box number 392 and showed the bank  
3 attendant his key. Respondent signed the access card using his father's signature. Because the  
4 bank attendant recognized Respondent, she violated protocol by not pulling the rental agreement  
5 and comparing Respondent's signature against the signature of the current box renters (Mr. and  
6 Mrs. J). The surveillance tape shows Respondent entering the vault empty-handed, but he  
7 departed the vault with a large white bag with unknown contents. The bag was similar to the  
8 white bags Mr. and Mrs. J left in their safe deposit boxes to carry items to and from the boxes.

9 f. On May 27, 2008, detectives from the Anaheim Police Department went to  
10 Respondent's residence. After not receiving a response to their knocks on the door, the detectives  
11 looked through a closed window and observed Respondent hiding in a bedroom. Once inside the  
12 residence, the detectives observed a basket full of old coins and the key to safe deposit box  
13 number 392 sitting on the kitchen table. Respondent told the detectives that he and his father  
14 had rented box number 392 for some time and that his father keeps papers and coins in the box.  
15 (The detectives attempted to talk to Respondent's 96-year-old father, but he was of diminished  
16 mental capacity and could not provide viable information.) When the detectives asked  
17 Respondent about downsizing to a different box, Respondent got upset and refused to speak  
18 further to the detectives. Respondent's sister arrived at the residence and confirmed that her  
19 brother told her that he and their father had turned in the large safe deposit box and rented a  
20 smaller one. When asked about the coins on the table, she told the detectives that they "just  
21 showed up" a little over a month earlier. Respondent's sister told the detectives to take the coins  
22 to see if the victims could identify them. Respondent was arrested. Mr. and Mrs. J later  
23 identified the coins as those taken from their safe deposit box.

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**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:


1. Revoking or suspending Registered Nurse License Number 428817 issued to Thomas Gilbert Pando;

2. Revoking or suspending Public Health Nurse Certificate Number 47378 issued to Thomas Gilbert Pando;

3. Ordering Thomas Gilbert Pando to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

4. Taking such other and further action as deemed necessary and proper.

DATED: November 4, 2011

  
for LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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